

APPENDIX A

§112b. United States International Agreements; Transmission to Congress

(a) The Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President. Any department or agency of the United States Government which enters into any international agreement on behalf of the United States shall transmit to the Department of State the text of such agreement not later than twenty days after such agreement has been signed.

"(b) Not later than March 1, 1979, and at yearly intervals thereafter, the President shall, under his own signature, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report with respect to each international agreement which, during the preceding year, was transmitted to the Congress after the expiration of the 60-day period referred to in the first sentence of subsection (a), describing fully and completely the reasons for the late transmittal.

"(c) Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement.

"(d) The Secretary of State shall determine for and within the executive branch whether an arrangement constitutes an international agreement within the meaning of this section.

"(e) The President shall, through the Secretary of State, promulgate such rules and regulations as may be necessary to carry out this section." [Underscored portions reflect amendments to the original Act]

APPENDIX B*

Legal Effect: The central requirement is that the parties intend their undertaking to be of legal and not merely political or personal effect. Arrangements intended to have political or moral weight but not intended to be legally binding are not international agreements. The intent of the parties must be determined by examining all relevant documentation. Intelligence agreements, including agreements which involve sensitive national security matters or intelligence sources or methods, may have legal effect in international law. The Office of General Counsel will determine whether any particular documentation evidences an intent that an undertaking be of legal effect.

Intention of the Parties to be Bound in International Law: Agreements must be governed by international law. Most instruments are silent as to governing law, but the intent is normally to seek guidance from rules of international law when questions arise with respect to interpretation or application. However, if the agreement specifies another legal system as entirely governing interpretation or application, the arrangement is not considered to be a true international agreement. The intent of the parties must be determined by examining all relevant documentation. Intelligence agreements, including agreements which involve sensitive national security matters or intelligence sources or methods, may be legally binding in international law. The Office of General Counsel will determine whether any particular documentation evidences an intent to be bound in international law.

Significance of the Arrangement: A minor or trivial undertaking, even if couched in legal language and form, is not an international agreement. Significant international agreements include "any agreements of political significance, any that involve a substantial grant of funds, any involving loans by the United States or credits payable to the United States, any that constitute a commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations, and any that involve continuing or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment."

*See, also, Memorandum to Key Department Personnel from State Department Legal Advisor, Subj: Case Act Procedures and Department of State Criteria for Deciding What Constitutes an International Agreement, 12 March 1976.

Requisite Specificity, Including Objective Criteria for Determining Enforceability: International agreements involve promises to do specific things. Vague promises to cooperate in general lack requisite specificity if there are no objective criteria to determine whether such promises are fulfilled.

The Necessity for Two or More Parties to an Arrangement: Unilateral commitments do not constitute international agreements. Parallel "unilateral" undertakings by two or more parties, however, may constitute an international agreement.

Form: Failure to follow the customary form for international agreements, as to matters such as style, final clauses, signatures, etc., may on occasion be evidence of lack of intent to be legally bound by the arrangement. On the other hand, if the general content and context reveals an intention to enter into a legally binding relationship, the lack of proper form will not be decisive.

Agency-to-Agency Agreements: Agencies can and do bind the United States in international law, and agency level agreements are reportable if they meet the above criteria.

Implementing Arrangements: The fact that an agreement merely amends or implements an agreement which became effective prior to August 1972 does not necessarily mean that it is not a reportable international agreement in its own right.